

### **REMARKS**

Claims 1-35 are pending in this Office Action. Claims 2, 5, 7, 9-12, 14 and 19 have been amended by this Amendment.

The Office Action dated September 20, 2006 objected to claims 2 and 5 because of informalities and rejected claims 5 and 10 under 35 USC 112. The Office Action also rejected claims 1-3 and 10 as being obvious over prior art under 35 USC 103(a). The Office Action does not examine claims 12-35 as being drawn to a nonelected invention.

Applicant gratefully acknowledges the indication that dependent claims 4-9 and 11 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims. Claims 4-7 and 11 are dependent on claim 1 and claims 8 and 9 are dependent on claim 2. Since claims 1 and 2 are believed to be allowable for at least the reasons given below, applicants have not rewritten claims 4-7 and 11.

### **Restriction Requirement**

In part 1 on page 2 of the Office Action, there is a reference to claims 12-35 nonelected with traverse and to "the final rejection." In part 6 on page 7 of the Office Action labeled "Response to Arguments", there is in fact no response to the applicant's arguments traversing the restriction requirement. Instead, the Office Action merely refers back to the original Restriction Requirement. Applicant therefore respectfully requests that the next Office Communication corrects this error and include a response to applicant's arguments against the restriction requirement.

In the first Office Action dated June 7, 2006, a eight-way restriction requirement was set forth. In his response filed on June 29, 2006, Applicant made several arguments traversing the restriction requirement. Specifically, applicant argued that: 1) the only reasoning provided for the restriction requirement was for Groups I, VII and VIII (see page 3, paragraph 2 of the Office Action), and the paucity of reasoning supporting the restriction of the other groups meant that the restriction was insufficient on its face (see page 2, third paragraph of Applicant's Response); 2) the computer control means addressed in the restriction requirement was not recited in the claims of Groups I, II, V and VII-VIII (see page 2, fourth paragraph); and 3) the independent claims are linked

by common claimed features easily group searched and other additional features in the claims may be commonly searched (see paragraphs bridging pages 2-3).

As noted above, the current Office Action does not respond to Applicant's arguments. Instead, it merely says they are not persuasive and refers back to the first Office Action (see part 7 on page 5). This is not appropriate. The Examiner must also address the arguments and provide an explanation as to non-persuasiveness. See MPEP 707.07(f).

The reference back to the first Office Action is especially inappropriate given that one of Applicant's arguments was that the restriction requirement was insufficient on its face. It is apparent that the current Office Action does not allow Applicant to judge the reasons for insisting on the restriction requirement, and to then proceed as he sees fit in light thereof, such as by providing linking claims or petitioning against the restriction requirement.

Applicant therefore requests that the next Office Communication include responses to applicant's arguments against the restriction requirement. Applicant further requests that they be afforded an opportunity to amend the claims as they see fit upon receipt of the responses to applicant's arguments against the restriction requirement. Cancellation of the non-elected claims is not appropriate because there is no final rejection, and will not be appropriate unless and until applicant has an opportunity to amend the claims in light of the responses to applicant's arguments against the restriction requirement.

### **Claim Objections**

The objections to the claims are set forth in part 2 on page 2 of the Office Action. Specifically, claim 2 is objected to because of an error in the equation on line 4. The error has been corrected (and an error in the same equation in claim 12 has also been corrected) by this Amendment. Claim 5 is objected to because the word "main" appears before "body unit." The word main has been deleted in claim 5 (and also in claim 14) by this Amendment. Appropriate correction of the informalities has thus been made by this Amendment.

### **Claim Rejections - 35 USC 112**

The grounds for the rejections of claims 5 and 10 under 35 USC 112 is set forth in part 3 on

page 2 of the Office Action. Specifically, claim 5 is rejected because there is insufficient antecedent basis for the limitation "said means for removably clamping" in line 5. Applicant has amended claim 5 to affirmatively recite the means for removably clamping without any need for antecedent basis. Claim 10 is rejected because there is insufficient antecedent basis for the limitations "first cylindrical opening" and "said speaker means" in lines 3 and 5, respectively. Applicant has changed "said first cylindrical opening" to "said cylindraceous opening" in claim 10 (and also in claim 19) by this Amendment, and changed "said speaker means" to "said speaker" in claim 10 (and also in claims 7, 9 and 11). The rejections under 35 USC 112 have thus been overcome by this Amendment.

### **Claim Rejection - 35 USC 103**

The grounds for the obviousness rejection of claims 1-3 and 10 is set forth in part 5 on pages 3-4 of the Office Action. The rejection relies upon the preferred embodiment of an outdoor speaker shown in Figs. 1-4 and discussed at col. 2, lines 17-24, of U.S. Patent No. 4,574,906 issued to White et al (this embodiment hereinafter referred to simply as "the White speaker"). Applicant respectfully traverses the rejection at least because it fails to establish a prima facie case that the White speaker includes each and every one of the combination of features recited in the rejected claims.

For example, independent claim 1 is directed to a stage speaker system with a cylindraceous body unit including at least one speaker, a rear cover unit, and a means for securing the body unit to the rear cover unit. The speaker includes "a front speaker face positioned at a first side of said body unit opposite an open second side" and the rear cover unit defines "a single cylindraceous opening." It is further recited that the total length of the speaker system is the same as or greater than a maximum diameter of the speaker system.

In contrast, the White speaker does not have "a front speaker face positioned at a first side of said body unit opposite an open second side" or a rear cover unit that defines "a single cylindraceous opening" as recited in claim 1. Even accepting (for the sake of argument only) the housing portions 11 and 13 of the White speaker as the recited rear cover unit and body unit, the White speaker does not have an open second side opposite a speaker face. The speaker 40 of the White speaker faces

base 15 rather than an open side. Furthermore, the housing portion 11 of the White speaker does not define a single cylindraceous opening. The opening in the White speaker is defined by the gap between internal flange or shoulder 43 and base 15.

Finally, the rejection acknowledges that the White speaker is not a stage speaker system. Indeed, it is not. However, the rejection asserts that it would have been obvious "to apply the speaker system of White in any application such as a stage speaker system for greater application."

First, there is simply no support even offered for the assertion. There is no secondary reference applied in the rejection, and there is no suggestion, motivation or teaching even mentioned in the rejection. Consequently, the rejection erroneously reasons that a "stage speaker system" is merely the application of a speaker system on a stage. Under such erroneous reasoning, any speaker system is a stage speaker system because it can be used on a stage.

The Background of the Invention portion of the specification, which includes the Field of the Invention, indicates the attributes of stage speaker systems. These attributes are pre-existing and are not discussed as part of the detailed description of the preferred embodiments of the invention. There is no indication that the White speaker can be readily adapted for use on a stage and that is a stage speaker system.

## Claim 2

Claim 2 is dependent on claim 1 and additionally recites a range of the ratio of the total length to the maximum diameter of the speaker system. The rejection acknowledges that the White speaker does not have a ratio within the recited range, but asserts that it would have been obvious to provide "any size, diameter or the length." There is no secondary reference or other support provided for the suggested modification of the White speaker. The rejection notes that the patent "does not restrict" the size, the diameter or the length for the White speaker. However, the rejection fails to, as it must, meet its burden of affirmatively establishing a prima facie case why one of ordinary skill in the art would have been modified the White patent so as to include the feature recited in claim 2. It is not sufficient that the prior art patent does not explicitly state that such a modification is inappropriate.

### Claim 3

Claim 3 is dependent on claim 1 and additionally recites a "clamping means for removably clamping said body unit to said rear cover unit." The rejection acknowledges that the White speaker does not include such clamping means, but asserts nonetheless that it would have been obvious "to provide any joining and supporting means." Again, the assertion is unsupported by any secondary reference or any alleged teaching, suggestion or motivation. The rejection fails to meet its burden of affirmatively establishing a prima facie case why one of ordinary skill in the art would have been modified the White patent so as to include the recited clamping means.

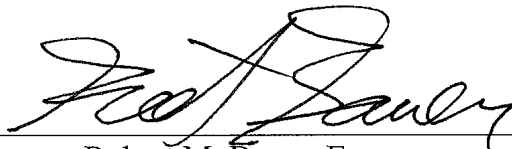
### Conclusion

The Commissioner is hereby authorized to charge the extension of time fees, and any addition fee that may be necessary for the consideration of this Amendment, to Deposit Account No. 10-0100 (Atty. Dkt. No. P-0301 ARP).

March 20, 2007

Date

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Robert M. Bauer", written over a horizontal line.

Robert M. Bauer, Esq.  
Registration No. 34,487  
Lackebach Siegel LLP  
One Chase Road  
Scarsdale, NY 10583  
Telephone: (914) 723-4300  
Telefax: (914) 723-4301